IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MALIK HOOD	:	CIVIL ACTION
	:	
v.	:	
	:	
LOUIS FOLINO, et al.	:	No. 10-3985

ORDER

AND NOW, this 19th day of April 2012, IT IS HEREBY ORDERED THAT Hood's motion for reconsideration (Doc. No. 22) IS DENIED.

In support of this order, I make the following findings and reach the following conclusions:

1. On July 31, 2010, Malik Hood filed a petition for writ of habeas corpus (Doc. No. 1) alleging claims of ineffective assistance of counsel as well as due process violations. After a close and objective review of the arguments and evidence, I found that four of Hood's claims were unexhausted and procedurally defaulted, one claim was non-cognizable, and four of his claims were without merit pursuant to the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C.A. § 2254(b)(1),(d)(1). As a result, I denied the petition with prejudice and without a hearing, and ordered that a certificate of appealability not be issued. See Hood v. Folino, 2012 WL 760795 (E.D. Pa. March 8, 2012). Presently before the Court is Hood's motion for reconsideration, asking the Court to reverse its order denying his petition for writ of habeas corpus and to grant his request for a new trial.[1]

2. Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. Fed.R.Civ.P. 59(e); E.D. Pa. R. Civ. P. 7.1(g). These motions should be granted sparingly, reconsidering the issues only when:

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[1]I note that Hood filed a notice of appeal in the Court of Appeals, dated March 18, 2012. A notice of appeal filed before the disposition of a motion for reconsideration will become effective upon entry of the order disposing of the motion. See Davis v. Gauby, 408 Fed. Appx. 524, 525 (3d Cir. 2010) (quoting Carrascosa v. McGuire, 520 F.3d 249, 253 (3d Cir. 2008)); Fed. R. App. P. 4(a)(4)(B)(i).

(1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. Cottrell v. Good Wheels, 2012 WL 171941, at *3 (3d Cir. Jan. 23, 2012) (per curium) (citing North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration as it is improper "to ask the Court to rethink what [it] had already thought through – rightly or wrongly." Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (internal quotation marks omitted).

3. Hood appears to argue that I must re-examine my decision because of a clear error of law or fact and manifest injustice. In support thereof, he asserts that his due process, ineffective assistance of trial counsel, and ineffective assistance of PCRA counsel claims are indeed meritorious. He further contends that his unexhausted and procedurally defaulted claims should be reviewed as he has established cause for the procedural default based upon the United States Supreme Court's recent ruling in Martinez v. Ryan, 132 S.Ct. 1309 (2012).

4. Hood argues that I erred in finding that his due process claims and claim of ineffective assistance of trial counsel were without merit. For the reasons set forth in my March 8, 2012 Memorandum, I conclude that the state court's findings were neither contrary to, nor an unreasonable application of, federal law. Therefore, the claims are denied. See Hood v. Folino, 2012 WL 760795, at *9-22 (E.D. Pa. Mar. 8, 2012). Hood does not point to any new factual or legal issue that would alter the disposition of this matter, nor does he present any clear error of law or fact that would necessitate a different ruling.

5. Hood next argues that I erred in finding that four of his claims were unexhausted and therefore procedurally defaulted[2]. He cites to the United States Supreme Court opinion in Martinez v. Ryan, supra, for this proposition. The Martinez Court created a narrow exception to Coleman v. Thompson, 501 U.S. 722 (1991). Coleman

[2]When a claim is not exhausted because it has not been "fairly presented" to the state courts, but state procedural rules bar a petitioner from seeking further relief in state courts, the exhaustion requirement is satisfied because there "is an absence of state corrective process." McCandless v. Vaughn, 172 F.3d 255, 260 (3d Cir. 1999) (citing 28 U.S.C. § 2254(b)). In such cases, however, petitioners are considered to have procedurally defaulted their claims and federal courts may not consider the merits of such claims unless the petitioner establishes "cause and prejudice" to excuse his default. Id. (citing Coleman v. Thompson, 501 U.S. 722, 750 (1991)). The Court in Coleman held that "negligence on the part of a prisoner's post-conviction attorney does not qualify as 'cause.'" Maples v. Thomas, 132 S.Ct. 912, 932 (2012).

established the rule that attorney error in post-conviction collateral proceedings does not constitute cause to excuse procedural default. Martinez provides an exception to that rule by holding that ineffective assistance of counsel at *initial-review collateral proceedings* may establish cause to excuse procedural default of a claim of ineffective assistance at trial. The Court reasoned that in situations where the first occasion to raise a claim of ineffective assistance at trial is in a collateral proceeding and an attorney errs, it is likely that no state court at any level will hear the prisoner's claim. "And if counsel's errors in an initial-review collateral proceeding do not establish cause to excuse the procedural default in a federal habeas proceeding, no court will review the prisoner's claims." Martinez, 132 S.Ct. at 1316

However, this narrow exception does not apply in Hood's case. All four of Hood's defaulted claims are assertions of ineffective assistance of trial counsel. However, Hood's counsel *did* advance these claims of ineffective assistance of trial counsel at his initial-review collateral proceeding. In Pennsylvania, initial-review collateral proceedings are under the purview of the Post Conviction Relief Act ("PCRA"), 42 Pa. C.S.A. § 9541, et seq.. Hoods claims were not raised on appeal from the *denial* of PCRA relief. "The holding in this case does not concern attorney errors in other kinds of proceedings, *including appeals from initial review collateral proceedings*..." Martinez, 132 S.Ct. at 1320. (emphasis added). The PCRA court addressed these ineffective assistance of trial counsel claims and found them to be without merit. Therefore, Martinez is inapposite here.

6. Finally, Hood argues that his non-cognizable claim of ineffective assistance of PCRA counsel for failing to properly frame his claim of after-discovered evidence is meritorious. Hood does not point to any new factual or legal issue that would alter the disposition of this matter, nor does he present any clear error of law or fact that would necessitate a different ruling.

7. Despite his arguments to the contrary, Hood has not provided any evidence of a clear error of law or fact, nor has he demonstrated that manifest injustice will result from my ruling.

It is further **ORDERED** that no certificate of appealability will be issued pursuant to 28 U.S.C. § 2253 because Hood has failed to make a substantial showing of denial of a constitutional right.

s/J. William Ditter, Jr.
J. WILLIAM DITTER, JR., J.